

Service Date: September 15, 1992

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF US WEST)	UTILITY DIVISION
COMMUNICATIONS, Complaint by)	
DAVID C. MOGAN, Concerning)	DOCKET NO. 92.9.47
Telecommunications Service)	
and Termination of Service.)	ORDER NO. 5649

FINAL ORDER

I. Factual Background.

On July 17, 1992 David C. Mogan (Complainant) filed a complaint (Complaint I) against US West Communications (Defendant). Therein Complainant alleged that his telephone service at 406-364-2263 had been wrongfully terminated. Complaint I, Docket No. 92.7.34, was dismissed based on Defendant's satisfaction of the requested relief.

On September 2, 1992 Complainant filed the instant complaint (Complaint II) against Defendant. Therein Complainant alleged that his telephone service at 406-364-2222 was wrongfully disconnected because 1) Defendant failed to provide proper written notice of termination; and 2) disconnection was based on a failure to pay for non-regulated services or services provided by other carriers. Complainant also alleged that Defendant failed to conform its bills to the required format and demanded a deposit in excess of that permitted by law.

On September 9, 1992 Defendant filed a motion to dismiss Complaint II, alleging that the substance of this complaint is identical to that of Complaint I.

II. Discussion.

Defendant's disconnection of service at 406-364-2263, which was the subject of Complaint I, was based on non-payment of charges owing for service at 406-364-2222. Complaint I contained no allegation disputing the charges owing for service at 406-364-2222, rather it was only alleged that 406-364-2222 was a business number and therefore service at 406-364-2263, a residential number, was improper. See ARM 38.5.3339(3)(a)(i).

The facts presented in this case and Docket 92.7.34 indicate that Complainant was receiving service at 406-364-2222, a residential number assigned to Apartment 3 at 202 Second Avenue North, Hinsdale, Montana. Complainant was also receiving service at 406-364-2222, a residential number assigned to Apartment 4 at the same address. Service to both these numbers was disconnected on June 23, 1992 because of an overdue amount of \$903.75 owing for service at 406-364-2222.

Complaint I (Docket No. 92.7.34) concerned a service dispute involving service at both 406-364-2222 and 406-364-2263. Complaint II (Docket No. 92.9.47) concerns a service dispute involving service at both 406-364-2222 and 406-364-2263. The Commission agrees with Defendant that the substance of Complaint I is identical to Complaint II. If Complainant disputed the propriety of termination of service at 406-364-2222 or the charges owing for that number, such disputes should have been raised at the time Complaint I was filed and relief was requested. Since Defendant provided the relief requested, an option allowed for in the notice of complaint, it should be afforded protection from subsequent complaints requesting further relief. To this end, fairness dictates that a complaint is dismissed with prejudice whenever the

defendant satisfies the complainant's demands for relief. The doctrine of resjudicata therefore applies and bars Complainant's attempt to re-litigate his service dispute with Defendant.

The Commission notes that in addition to reconnecting service at 406-364-2263, it also established a schedule for the payment of the charges owing at 406-364-2222. Coincidentally, Complaint II was filed on the day that Complainant was to have paid off these charges. Since service at 406-364-2263 would have once again been terminated for non-payment of charges owing for service at 406-364-2222, the filing of Complaint II creates the impression that Complainant is attempting to avoid payment of his telephone bill by filing a merry-go-round of complaints designed to take advantage of ARM 38.5.3339(3)(b), which prohibits termination of service for failure to pay an amount in dispute before the Commission. The Commission will presume that this is not the case, but will caution Complainant against the filing of frivolous complaints intended to avoid payment of charges rightly owing.

CONCLUSIONS OF LAW

1. US West Communications provides regulated telecommunications services within the State of Montana and is a public utility under the regulatory jurisdiction of the Montana Public Service Commission. Sections 69-3-101 and 69-3-803(3), MCA.
2. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA.
3. The Commission has the authority to consider service complaints against a public utility. Section 69-3-321, MCA.

ORDER

1. The complaint filed by David C. Mogan against US West Communications in this Docket is hereby dismissed on the grounds of resjudicata.

Done and Dated this 8th day of September, 1992 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DANNY OBERG, Chairman

WALLACE W. "WALLY" MERCER, Vice Chairman

BOB ANDERSON, Commissioner

JOHN B. DRISCOLL, Commissioner

TED C. MACY, Commissioner

ATTEST:

Ann Purcell
Acting Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.